

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHON SAMPLE,	§
	§ No. 427, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0405022601
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 18, 2010

Decided: September 20, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 20<sup>th</sup> day of September 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Stephon Sample, filed an appeal from the Superior Court's June 15, 2010 order adopting the October 16, 2009 report of the Superior Court Commissioner, which recommended that Sample's second postconviction motion pursuant to Superior Court Criminal Rule 61 be denied.<sup>1</sup> The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is

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<sup>1</sup> Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup>

We agree and affirm.

(2) In March 2005, following the denial of his pretrial suppression motion, Sample entered a plea of guilty to a single count of Trafficking in Cocaine. The State dismissed 31 other drug-related charges as part of the plea agreement. Sample was sentenced to 25 years of Level V incarceration, to be suspended after 10 years for 1 year of Level III probation. In October 2007, this Court dismissed Sample's untimely attempt to appeal the Superior Court's 2005 denial of his pretrial suppression motion.<sup>3</sup> This Court also affirmed the Superior Court's denial of Sample's first postconviction motion.<sup>4</sup>

(3) In this appeal, Sample claims that a) his counsel was ineffective for failing to file a direct appeal in 2005; b) his guilty plea was involuntary due to his counsel's ineffectiveness; c) the State intimidated him into accepting a plea; d) the Superior Court lacked jurisdiction to convict and sentence him; and e) his standby counsel had a conflict of interest.

(4) Prior to addressing the substantive claims made in a motion for postconviction relief, the Superior Court must first consider the procedural

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> *Sample v. State*, Del. Supr., No. 507, 2007, Jacobs, J. (Oct. 26, 2007).

<sup>4</sup> *Sample v. State*, Del. Supr., No. 278, 2007, Jacobs, J. (Oct. 22, 2007).

requirements of Rule 61.<sup>5</sup> Under Rule 61(i)(2), any ground for relief that was not raised in an initial postconviction motion is barred as repetitive. Under Rule 61(i)(3), any claim that was not asserted in the proceedings leading to the judgment of conviction is procedurally defaulted. Finally, under Rule 61(i)(4), any claim that was previously adjudicated is procedurally barred. All of Sample's claims are barred by one or more of the above provisions. As such, his appeal is unavailing unless he can demonstrate a miscarriage of justice pursuant to Rule 61(i)(5).

(5) Our review of the record does not support a claim of a miscarriage of justice. Sample's first four claims are all based upon his contention that his guilty plea was involuntary, thereby providing a basis for an appeal and for his claim that the Superior Court lacked jurisdiction to convict and sentence him. However, this Court has previously ruled that Sample's plea was entered knowingly and voluntarily, thereby rendering his first four claims meritless.<sup>6</sup> As for Sample's final claim, there is no evidence in the record before us that Sample ever had standby counsel. As such, we find that claim, too, to be without merit.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

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<sup>5</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>6</sup> *Sample v. State*, Del. Supr., No. 278, 2007, Jacobs, J. (Oct. 22, 2007).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice